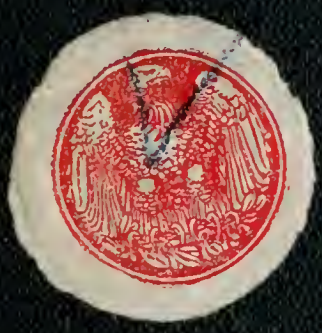

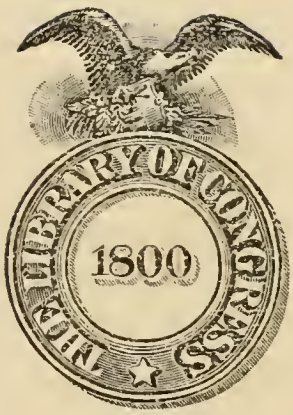

SPEECH

OF

MR. M'LANE,

OF DELAWARE,

On the following amendment proposed by Mr. Taylor, of N. Y. to the Bill authorising the people of Missouri to form a Constitution:

Section four, line twenty-five, after the word "States," insert the following: "And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said state, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any other state, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid: *And provided, also*, That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said territory."

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, FEBRUARY 7, 1820.

MR. CHAIRMAN: If it were not for the peculiar situation in which I shall be placed, in regard to some respectable opinions prevailing in the state from which I have the honor to come, by the vote I shall feel it my duty to give upon the present occasion, I should not trespass upon the time of the committee. If the eloquence and ability which have been already employed in this debate have not produced any change of opinion, I have not the presumption to suppose that it will be in my power to vary the result; but, if it is not for me to disturb the opinions of others, I may afford a justification of my own, and furnish to those who may hereafter feel any interest in the course I deem it my duty to pursue, an exposition of the motives by which I am governed.

I concur with the honorable mover of the amendment, that it presents an act of no ordinary legislation; and I am very sure he cannot easily overrate its importance—an importance derived, not more from

the intrinsic magnitude of the question, in all its relations, than the excitement and tumult to which it has given rise in every part of the republic. I do not believe that any subject has ever arisen in this country, since the formation of the government, which has produced a more general agitation, or in regard to which greater pains have been taken to inflame the public mind, and control the deliberations of the national councils. The dazzling reward of popular favour, invested with all its fascinations, has been held up on the one hand, and the appalling spectre of public denunciation, with all its frightfulness, on the other. The sincere and humane, actuated, I am sure, by the best and purest motives; the aspiring demagogue and ambitious politician; those who wish well to their country; and those who seek power on the troubled sea of popular commotion; have promiscuously united in these public agitations, until the press has teemed, and our tables groaned, with a mass of pamphlets and memorials beyond example.

The state which I have the honor, in part, to represent, has been the theatre of a full share of this agitation; and the honorable legislature of that respectable state has been pleased recently, to take up the subject, and have unanimously resolved that, in their opinion, Congress have the constitutional power, and ought, to impose this restriction upon the new states

Entertaining the respect I do for the intelligence of the people of my own state, and the character of their legislature, I cannot find my opinion in opposition to theirs without the most unfeigned regret. For, although I do not concede to the legislature of a state the right of instructing the representatives of the people in Congress, or of employing its official character to influence their conduct, or to affect their responsibility, yet, viewing their acts, in this respect, as the opinions of the individual members merely, I cannot regard them with indifference, selected, as they undoubtedly should be, from their fellow citizens, as distinguished for some portion both of virtue and intelligence.

I am free to admit that, in subjects of general policy merely, the will of the people, when fully and fairly

ascertained, is always entitled to great weight; and, upon an occasion like the present, if I were influenced by motives of expediency only, I should be much disposed to yield my impressions to that will. But, in constitutional questions the representative is, or ought to be, governed by higher considerations; and he would be unworthy of his trust who could be regardless of them. He is sworn to support the constitution, and he takes his seat in this house, to legislate for the nation, under the provisions of that instrument. His own integrity, and the safety of our common institutions, depend upon his strict personal accountability: his own opinions, formed by the best lights of his own impartial judgment, must be his guide, and he cannot adopt those of others, when conflicting with his own, without a surrender of his conscience. In such cases, popular feeling and legislative recommendation can have no greater influence than to weaken one's confidence in his own impressions, and to dictate a re-investigation of the subject, to see if conclusions may not have been drawn from false premises, or views overlooked, which, if they had been adverted to, would have led to a different result. I have allowed the recommendation of the legislature of Delaware to have such an effect in this instance. I have deliberately reviewed and reconsidered this important subject, divested, I am sure, of any improper feeling, and prompted by every allurement of popular favor, to reach a conclusion in conformity with their views; but, I am bound to say, after this re-investigation, pursued with great labor, and a full sense of my responsibility, that I believe, in my conscience, that Congress does not possess the power to impose the contemplated restriction. In this belief, then, Mr. Chairman, and resting upon the principles of the constitution, and my duty to a power higher than any legislature, I must regret the difference of opinion, and be contented with an upright discharge of my public trust. I will take leave to say, sir, in the language of an illustrious man on another occasion, who I could desire to imitate in many other respects, "I honor the *people* and respect the *legislature;* but there are many things in the favor of either, which are objects, in my account,

not worth ambition. I wish popularity, but it is that popularity which *follows*, not that which is *run after*. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends, by noble means. I shall not, therefore, on this occasion, do what my conscience tells me is wrong, to court the applause of thousands; nor shall I avoid doing what I deem to be right, to avert the artillery of the press."

I shall not, in this place, sir, imitate the example of other gentlemen, by making professions of my love of liberty, and abhorrence of slavery; not because I do not entertain them, but because I consider that the great principles of neither are involved in this amendment. It is a coloring, to be sure, of which the subject is susceptible, and which has been used in great profusion, but it serves much more to inflame feelings and prejudices unfriendly to a dispassionate deliberation, than to aid the free exercise of an unbiassed judgment.

This amendment does not propose, nor has it for its object, to inhibit the introduction of slavery from parts beyond the United States: in such a scheme there is no intelligent man in the Union who would not cordially concur. Neither does it propose to promote the emancipation of the slaves now in the country; this is admitted to be impracticable; the wildness of enthusiasm itself acknowledges its incompetency for such an undertaking. The truth is, sir, that this species of unhappy beings are now among us; brought here, in part, by events beyond our control, and, in part, under the authority of our own constitution; and it behoves us, by a wise and prudent administration of our powers, to meliorate their condition, and accommodate the evil, as far as it may be practicable, to the peace and happiness of our white population, and the stability of our institutions. It is not pretended, even, that the condition of the unhappy slave himself would be improved by the success of this amendment: on the contrary, it has been insinuated, as boldly as the sentiment would justify, that his confinement to a narrower compass might lead to his extirpation, by the gradual, but sure, process of harder labor, and scarcity of subsistence. I am free to say, that the

condition of the slave himself would be meliorated by his dispersion; nor do I attach the same importance, as some gentlemen appear to do, to the danger of encouraging an illicit importation from abroad by permitting a market west of the Mississippi. It is an argument founded on the futility of legal restraint, the worst possible species of argument by which a legislature could be influenced It would prove the inutility of every act of legislation, or might be used to justify every species of usurpation. It would equally demonstrate the futility of the proposed amendment itself; for, if gentlemen cannot hope to exterminate the foreign slave trade, by all the precautions legitimately in their power, founded in an unanimity of legislation, strengthened by the powerful force of public sentiment, and the abominable nature of the traffic itself, what greater reliance can they place upon this restriction, foisted into the constitution of a free people against their consent, on which account, alone, it would be an object of hatred and contempt, and the violation be winked at by a great portion of the people, if not by their public authorities.

Sir, this amendment does not even propose to prevent the introduction of slavery into Missouri *for the first time;* it has already taken root there; we found it there when we acquired the territory and it has grown and extended under the *sanction of our own laws;* but the whole force and effect of the amendment is, to take from the people of Missouri the right to decide, for themselves, whether they will permit persons removing thither, from other states in which slavery is tolerated, to take their slaves with them. This object would not be undesirable, if it could be accomplished by the legitimate powers of Congress; but we have no right to do it by an assumption of power in ourselves, or by an unauthorized use of the power of others.

Mr, Chairman, the great question involved in this amendment, is neither more nor less than this: Whether Congress can interfere with the people of Missouri in the formation of their constitution, to compel them to introduce into it any provision, touching their municipal rights, against their consent, and to give up

their right to change it, whatever may be their future condition, or that of their posterity? Every thing beyond this is merely the imposing garb in which the power comes recommended to us. It is certainly true, that an attempt to take from this people the right of deciding whether they will, or will not, tolerate slavery among them, is less objectionable because of its end, than it would be if it interfered with some other local relation, or right of property; but the power to do this, implies a power of much greater expansion. Congress has no greater power over slavery, or the rights of the owner, in any particular state, than it has over any other local relation, or domestic right; and, therefore, a power to interfere with one, must be derived from a power to interfere with all. Sir, it is manifest, from the avowal of the honorable mover, that he contemplates a wider scope of power, and the attainment of important ends, other than those which lie upon the surface of this amendment. The gentleman seemed not to limit his view to the municipal effect of this power; in his eye it was to have an indirect operation upon the federal powers of the general government; since his chief objection appeared to be to the enumeration of slaves in the ratio of congressional representation. Sir, I think it will be in my power so shew, that the gentleman's fears, on this score, are groundless; but they serve to prove, nevertheless, that this is neither, wholly, a question of slavery, nor a power limited to this single object, but that it is only one, selected from an immense mass of power, authorizing Congress to control the rights of a free people, in the formation of their state constitution; and, in this way, to enlarge the operation, if not the nature, of the political power of the general government.

Having thus attempted to place the real question before the committee upon what I conceive to be its true grounds, I beg leave to invite their attention to a closer examination of this subject.

By the constitution of the United States, it is provided, that "new *states* may be admitted, by the Congress, into *this Union.*" This is a power to "*admit*" a "*state*"—it is no power to *form*, or *create*, a state;

it pre-supposes the right to *form* a state to reside elsewhere, and, as I shall attempt to shew more particularly hereafter, that right resides in *the people*, and this clause invests Congress with no power to interfere with the exercise of it. It is also a power to "admit" a "*state*"—it is not to admit a territory, or any thing less than a *state;* and it is a power to "admit" a "state *into this Union.*" This Union, as I shall presently shew, is nothing more than a compact between the states who compose it, and the general government; and, if any member of it is admitted upon the principles of a different compact, or with fewer or greater privileges, the Union, in that respect, would be changed.

Such a limitation is no disparagement upon the powers of Congress; and, in ordinary cases, would be sufficient for every useful purpose. The power, in itself, is, ordinarily, discretionary, and, in the exercise of this discretion, where it existed, the power would be competent to attain all ends consistent with the principles of a republican government. In every case where the discretion existed, the people composing the state or community applying for admission, would form their constitution according to their own views of their welfare and happiness, present it for the acceptance of Congress, and solicit admission; the power to be exercised by Congress, in such a case, would be to "admit" or reject; in the exercise of this discretion, it would be their duty to consider the nature of the constitution, its influence upon the habits and character of the people who were to be governed by it, and, also, its conformity with the spirit and principles of the people of the United States, as well as the effect of a new state upon the interests and conditions of the Union, generally. If, after this deliberation, Congress should be willing to exercise their power to "admit," they would, of course do so; but they would admit a "state" governed by a constitution formed by the people, for their own government, in whom, alone, the power to form it resides; and the state so admitted, would take her station with the others composing the Union, and then, and not sooner, the powers of the general government would operate

upon her in common with all the others. If, on the other hand, Congress should refuse to "admit," the people would remain in their former condition; if it were a state independent of the Union, it would continue in its government; if a *territory*, belonging to the United States, it would remain under a territorial form of government, until, by a re-modification of their constitution, or the views of different councils, they could obtain the assent of Congress to their admission into the Union. But I contend that, in such case, whatever may have been the provisions of the constitution of such people at the time of their admission into the Union, they would have the right, under the principles of our government, to change it, if their happiness and the condition of their internal affairs should at any time render it necessary.

If in this instance, Mr. Chairman, the ordinary discretion of Congress existed, I should be disposed to exercise it, and refuse to admit the state, until the constitution was formed according to my views of the great interests of this Union; though I am free to admit, that much is due to the principles of our republican policy for extending the blessings of self government to all its people, as soon as their numbers will admit of it, and of holding as few of our people as possible in a state of colonial dependence. But, sir, I contend that, in regard to the people of Missouri, our discretion has been surrendered by the legitimate authority of the government, and by Congress itself, and that we are not now free to exercise it.

The people of Missouri come here with the treaty of 1803 in their hands; they demand admission into the Union as a matter of right—they do not solicit it as a favor. If their constitution is republican, and consistent with the provisions of that under which we are acting, we have no alternative, unless it is to refuse to execute our own contract—to violate the plighted faith of the nation. No one will undertake, at this day, to deny, that the United States had the right to acquire the Territory of Louisiana. They had the right also to acquire it by contract; the right of acquiring includes the right of governing it; and, in contracting for its acquisition, it was competent to stipulate the terms and the princi-

ples by which the right of governing it should be exercised. If the United States were competent to make the treaty, the treaty was competent to take away the discretion of Congress, for it is declared to be the "supreme law of the land."

It must also be conceded, that the power to admit new states, is one of the powers of the *general government*, and I shall not deny that, in its ordinary exercise, it belongs to Congress; but, being a power in the general government, given up by the states, its exercise may be regulated and controlled by the treaty-making power; which is the extraordinary and supreme power of the same government. The powers of the general government are executive, legislative, and judicial; and are, ordinarily, exercised by the respective departments on which they naturally devolve: they may or may not be exerted, as circumstances make it proper. But the treaty-making power is the extraordinary power, which may stipulate with regard to the exercise of any of them, and its stipulations are binding; because they render the exercise of the power necessary. No treaty can be unconstitutional which stipulates for the performance of any matter which it is within the power of the general government to perform; a distinction to which the honorable gentleman from Pennsylvania, Mr. Hemphill, did not advert, when he found it necessary to elude the obligations of the treaty of 1803, by pronouncing it unconstitutional. A treaty is only unconstitutional, when it stipulates for the exercise of powers, or the surrender of rights, which never have been given to the general government, but belong to the states and the people. This is the exposition which has ever been given to the treaty-making power, since the famous British treaty. It would be difficult to imagine a treaty that did not contain some stipulations in regard to the powers either of the executive or legislative departments of the government. The power to regulate commerce, with foreign nations, to appropriate money, and to raise armies, belong to Congress. But the treaty-making power may make stipulations in regard to either, and for the exercise of either, and the Congress and the nation would be bound by them.

The interference of Congress might, in some instances, be necessary to carry the stipulations into effect; and it would be their duty in good faith to yield it. If they refused, the national faith would be violated, but the treaty would not be void. In the very instance of the Louisiana treaty, it was stipulated, among other things, to pay——— as the price of the cession. This amounted to a stipulation that Congress should appropriate that sum of money. Congress cannot have, and ought not to have, a more unlimited discretion. in the exercise of any power, than in that of appropriating money; yet the treaty stipulated, that they should exercise the power, and the Congress did exercise it; could not the treaty then stipulate that they should admit a state into the Union, and if it do so, are not Congress equally bound to execute it? Shall it be said, that their discretion is gone in the one case, but exists in the other? Then, sir, has the treaty of 1803 stipulated that Congress shall exercise their power to admit this state, and have Congress sanctioned the stipulation?

The third article contains this provision: "The *inhabitants* of the ceded territory shall be *incorporated* in the union of the *United States*, and *admitted* as soon as possible, according to the principles of the Federal Constitution, to the *enjoyment* of all the *rights*, *advantages* and *immunities* of citizens of the United States; and in the *meantime* shall be *maintained* and *protected* in the *free enjoyment* of their *liberty*, *property*, and the religion which they profess."

It must be conceded that this article was designed to have some meaning, and to secure to the inhabitants some *rights* and *advantages*, to which they could have no claim without it. It will not do, in the interpretation of an important instrument of this description, to say that the only article which applies to the inhabitants whose rights would be affected by the transfer, is a mere matter of form without substance or design. Its own language clearly imports its intention, to confer "*rights*, *advantages*, and *immunities*" of a political character, and such as they could not have claimed as a matter of right, without this stipulation. What would have been the condition of

these inhabitants in relation to the government of the United States. if the treaty had not contained this provision? Sir, the power of the general government over them and the territory, would have been supreme: it could have kept them in a state of perpetual colonial dependence; placed over them any form of government whatever, and, if it pleased, have sold them again to any foreign power. It would have been completely discretionary to have "*incorporated*" them into the Union or not, as it pleased, and to give them such rights as it thought proper, and when it pleased. Now these are the very powers this treaty meant to tie up; and when we consider the objections which the language and foreign habits of these inhabitants might have interposed to their incorporation into the Union, and that the United States were bargaining more for the free navigation of the Mississippi river, than an accession of territory or population; it became an imperious duty on the French government to stipulate, that if the United States obtained *their* object, they should be compelled to extend the rights and advantages of free government to the inhabitants.

They are to be incorporated into the *Union* of the United States, and are to be admitted as soon as possible to the enjoyment of the rights, advantages, and immunities, &c. and, "in the *mean time*, they are to be protected in the free enjoyment of their property." This latter claim, shews that their incorporation into the Union, meant more than a territorial form of government; they were to be under such a government until they could be incorporated into the Union, and, during that time, their property was not to be disturbed It was only under that form of government that the United States could interfere with these rights; their power would cease when it became possible to incorporate them into the Union, and admit them to the enjoyment of all the "rights, advantages, and immunities of citizens of the United States;" in virtue of which, they would, themselves, be authorized to regulate their own property.

Now, Mr. Chairman, the people of Missouri cannot be incorporated into the *Union*, but, as the people of a "*state*," exercising state government. It is a union of

states, not of *people*, much less of *territories*. A *territorial* government can form no integral part of a union of *state* governments. Neither can the people of a *territory* enjoy any *federal* rights, until they have formed a state government, and obtained admission into the *Union*. The most important of the *federal* advantages and immunities, consist in the right of being represented in Congress, as well in the Senate as in this House, the right of participating in the councils by which they are governed. These are emphatically the "*rights*, *advantages*, and *immunities* of citizens of the United States. The inhabitant of a territory merely, has no such rights—he is not a citizen of the United States. He is in a state of disability, as it respects his political or civil rights. Can it be called a "*right*," to acquire and hold property, and have no voice by which its disposition is to be regulated? Can it be called an advantage or immunity of a citizen of the United States to be subjected to a government in whose deliberations he has no share or agency, beyond the mere arbitrary pleasure of the governor? To be ruled by a power irresponsible, to him at least, for its conduct! Sir, the rights, advantages, and immunities of citizens of the United States, and which are their proudest boast, are the rights of self-government, first, in their state constitutions, and, secondly, in the government of the Union, in which they have an equal participation.

It is said, however, by the honorable gentleman from Pennsylvania, (Mr. Hemphill) that they are to be admitted according to the principles of the federal constitution, and that, as by those principles, it is discretionary in Congress to admit or not, we are at liberty to act or not. Surely, sir, this argument resembles too nearly a play upon words, to be received by a grave legislative body, professing to execute, in good faith, the spirit of a treaty. Such a construction would render the treaty a mere nullity. It is plainly to say, to the people of Missouri, that though we cannot deny that the treaty has stipulated that you shall be admitted, yet that we shall take the liberty of executing the contract or not, as we please. There is, first, a definite and distinct stipulation, "that the in-

habitants shall be incorporated in the Union of the United States; and then follows the subsequent clause of the article, clearly explanatory of the nature of the "incorporation," to wit: "and admitted *as soon as possible*, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." In this is included as positive an engagement, that Congress shall exercise their power to admit these inhabitants into the Union, as there is in the other articles of the treaty, that Congress shall pass the necessary laws for carrying their respective provisions into effect. The words "according to the principles of the federal constitution," obviously apply to the extent of the population, or the obligations incurred in virtue of the admission. This is most manifest from the provision, that they shall be admitted "*as soon as possible*," according to the principles of the federal constitution. If it had been designed to leave the matter discretionary, it would have been useless to provide for their admission "*as soon as possible*." If the provision had been, that they should be admitted as soon as their numbers shall amount to 40,000, there would have been no doubt; the actual provision is not less explicit. It makes it obligatory upon Congress to admit them as soon as they have the power to admit them under the constitution. They have this power as soon as the population is sufficiently numerous, according to the established ratio of representation, to entitle the state to one representative.

Sir, this clause is entirely in favor of the rights of the inhabitants, and restrictive of the powers of Congress. Its object was not merely to secure their incorporation in the Union, which might have been liable to some embarrassment, but also to secure to them that incorporation, and the free enjoyment of all the rights, advantages, and immunities of citizens of the United States, according to the principles of the federal constitution.

Such, sir, I insist is the true exposition of this treaty, a treaty adopted by Congress, with a full knowledge of such exposition, which has been uniformly given to it by every act of the government, since its ra-

tification. As I deem the true import of the treaty of much importance in this argument, I must beg your permission to refer, with some particularity, to the acts of the government in this respect.

One principal point of difference between the two great parties by which the people of this country were originally divided, was in regard to the force and effect of the treaty making power. Mr. Jefferson, who was at the head of the administration when the treaty of 1803 was concluded, entertaining the opinion, that it was not binding upon Congress until it received their approbation, submitted it to them, and recommended the passing of the necessary laws to carry it into effect. The party at that day opposed to Mr. Jefferson's administration pronounced the treaty unconstitutional, because it stipulated to admit states into the union, carved out of a territory which formed no part of the old Thirteen States. They did not deny the force of a treaty containing engagements in regard to the powers of Congress, but said that *no department* of the general government had power to make *new states* out of *new territory*. The third article of the treaty of which I have been speaking, was the objectionable clause, and both parties concurred in ascribing to it the same construction for which I now contend. On that occasion, Mr. Griswold, of Connecticut, and one of the ablest and most distinguished statesmen of whom this country can boast, when speaking of the just interpretation of this third article, said, "It is perhaps somewhat difficult to ascertain the precise effect which it was intended to give the words which have been used in this stipulation. It is however clear, that it was intended to incorporate the inhabitants of the ceded territory into the Union, *by the treaty itself, or to pledge the faith of the nation*, that such an incorporation should take place within a reasonable time." The Hon. Mr. Tracy, of the Senate, upon the same occasion, and in reference to the same article, also expressed himself in the following terms—"The obvious meaning of this article is, that the inhabitants of Louisiana are incorporated *by it* into the Union upon the same footing that the territorial governments are, and the terri-

tory *when the population is sufficiently numerous must be admitted* as a state, *with every right of any other state.*" Mr. Pickering went even farther, and said, "If, in respect to the Louisiana treaty, the United States fail to execute, and, within a reasonable time, the engagement in the third article, to incorporate the territory in the Union, the French government will have a right to declare the whole treaty void." This construction was acquiesced in by the opposite side, who contended that the power to admit new states was not confined to the old territory, and, that as the treaty was now submitted for the approbation of Congress, they had only to determine whether it was expedient to adopt it with this provision. After the utmost deliberation, and with a full understanding of the clear import of this third article, Congress determined to adopt the treaty. They accepted the territory, and passed the necessary laws for carrying it into full effect. *They made it their own act.* They subsequently divided it into two territorial governments, and made no attempt to prevent the existence of slavery in either; they sold the land, and invited emigrants to go thither from other parts of the United States, and buy and settle, but did not prohibit them from carrying their slaves with them.—They sold the land *and put the money in the public treasury.* As soon as the population of that part of the territory called, under the division, Louisiana, became sufficiently numerous, Congress admitted it into the Union, as a state, upon the same footing with the original states: no attempt was made to insist upon a restriction similar to the present, or to impose any other condition against their consent, which in any manner affected the rights of the people, in the exercise of their sovereign power. The provisions to which Congress required the people of Louisiana then to submit, will be found, with one exception, to be such as were prescribed by the constitution of the United States, and to which they would have been subjected, though they had not put them into their constitution. Their enumeration in the law was wholly a matter of caution. On that occasion, also, the people *voluntarily* assented to the terms, and the right of Congress to impose

conditions, against their will, never was asserted. It was particularly so in that part of the law, which stipulated that the lands sold by the United States should not be taxed for five years. It is, however, to be remarked, that this was not a destruction of the power in the people to tax the land, it was an *agreement* merely between the parties, to suspend it for a term of years but, the restriction now attempted to be imposed upon the people of Missouri, is a complet annihilation of their power and right for ever. In the case of Louisiana it was no part of their constitution, it was a mere agreement by separate contract, not to use a power admitted to be in them for a limited time; in the case of Missouri, it is an attempt to make a constitution, extinguishing a power, and making that constitution irrevocable!

The Congress of the United States having thus given a contemporaneous interpretation to this treaty, and their own obligations, have, by the most unequivocal and positive acts, encouraged the emigration of the citizens of the United States from the other states, who have gone thither in the expectation, and under the engagements of Congress, that the territory should be incorporated into the Union upon an equal footing with the original states, as soon as the population would justify it, and they stand therefore upon the same footing, and are entitled to the same rights, which belonged to the inhabitants residing there, at the time of the cession.

It appears to me, therefore, Mr. Chairman, to be established past controversy, that Congress are bound to admit the Missouri territory into the Union—and that we have no discretion to admit or reject. If we have no such discretion, how is it possible that we can require from the people any terms which are founded on this discretion? We can only enforce our terms by declining to admit the state, unless they are assented to; but, we have no power to refuse to admit, and therefore, we have as little power to prescribe the terms of admission.

I am willing to admit, however, Sir, that if there be any thing in the constitution of the United States which will authorize Congress to impose this restric-

tion upon the people of Missouri, independent of our power to reject the state, the treaty will not prevent its exercise. These people though they have, a right to be incorporated into the Union as a state, as the people of a state, they are to be entitled to no greater privileges, or liable to greater obligations than the people of any other state, under the Federal Constitution.

What then are the principles of the Federal Constitution, and the powers conferred upon Congress in this respect?

The fundamental principle of this and of every republican government, is, that the sovereign power resides, and is inherent in *the people*, and not in the *government*. The sovereign power is the right of the people to unite together for objects of their mutual safety and advantage, and to establish a public authority to order and direct what is to be done by each, in relation to the end of the association. Upon the principles of our government, all the sovereignty is in the people—they are the fountain whence it all flows, and the general government has no power than what the people have delegated to it for *federal purposes*. These are the rights asserted in the declaration of independence; they are those for which our fathers contended with Great Britain, and, wherever man is found, he is found in the possession of them. In the establishment of the public authority, a greater or less portion of power may be delegated by the people, by *voluntary* engagements; but, whatever may be the power delegated the sovereignty is not impaired, since it was by their will, and may be recalled or modified by the same will, when the ends and objects of their association require it; all governments are instituted for the protection of this right in the people. Before the formation of the Union, the people of each state were sovereign and independent; they had exercised their sovereignty in the formation of state constitutions and governments; they not only retained all power not given to these governments by their constitutions, but they possessed the right and power of altering and changing their constitutions at will. In virtue of this sovereign power, the people of the old states consented to form a

compact of Union, for their mutual safety and equality of rights, and they consented to vest, in the government of the Union, certain powers, the better to guarantee to the people the enjoyment of the remainder. The powers of the general government are therefore limited, and all the power not delegated remains with he, states, as far as their constitutions give it, and with the people. In all other respects, the states and the people are as completely sovereign as they were before the union. It will not be pretended that the people have ever surrendered their right to alter and change their state constitutions, and to make any provision not inconsistent with the constitution of the United States. It follows, then, from these principles, that a state is a body of men united together for their common interest; the term imports sovereignty, and, in our Union, it imports that portion of sovereignty which has not been given to the general government, and which resides with the people. When we speak, therefore, of admitting a state into the Union, we can mean nothing more, than the admission of a community of people in whom the sovereign power resides, into another community of states, by which they voluntarily agree to refrain from the exercise of a certain portion of their power, whenever it is incompatible with the powers of the Union; in every other respect, their power remains as it did before their admission. The admission of a state cannot enlarge the powers of the Union, though it may limit the exercise of the sovereignty in the state. The power exerted by the general government are in virtue of the authority vested in it by the *constitution*, while the powers exerted by the state governments, are in virtue of the *sovereign power in the people*. The interference of Congress can neither change the original compact of the Union, nor abridge the rights of the people. The moment a new state is admitted, the people advance to the enjoyment of the federal rights, and the general government to the exercise of the federal powers, not in consequence of any new compact, but in virtue of the old compact in the constitution of the United States, to which the people of the new state *voluntarily* submit and become parties, when they are admitted

into the Union. The general government cannot alter this constitution, they can only exercise the powers conferred by it. They cannot, therefore, deprive the people of a new state of any federal right, which, in relation to them, does not exist until their admission into the Union—the federal rights of the people, and the powers of Congress, spring into existence together. The powers of Congress are wholly independent of the nature or provisions of the state constitution, whatever that constitution may be; they have an uncontroled sway within their federal sphere. and, therefore, no new compact can be necessary to their operation. If, then, Congress can exercise no federal power until the state is admitted, and if upon that admission they can neither abridge nor augment the federal rights, by what authority can they interfere with *municipal rights* which form no part of the constitution of the United States, but reside in the people? It cannot be reasonably contended that the general government can form a state constitution—if they cannot form it in the whole, they cannot form it in part. How can they make a constitution for a state, when they could not make their own, and cannot alter it now that it has been made by the people and states? If the general government can confer no municipal rights, it is because they neither possess any nor have the power to control them, and, if they cannot enlarge, it is impossible they can abridge them

The powers of the general government are purely *federal*, they are neither *national* nor *municipal:* the rights of the people, in their state governments, are both *national* and *municipal.* The jurisdiction of the federal government extends to the connections, intercourse, and commerce of the republic with foreign states and nations, and with each other as sovereign independent states. But the administration of all their local concerns; the regulation of their domestic relations; the rights of property, together with the whole routine of municipal regulations belong to the states and the people. Judge Tucker, in his commentary upon the constitution of the United States, adopts this as the grand boundary, as marking the limits between the federal and state jurisdictions; to

the former he allots, "jurisdiction in all cases arising under the political laws of the confederacy, or such as relate to its general concerns with foreign nations, or to the several states as members of the confederacy; and, to the latter, the cognizance of all matters of a civil nature, or such as properly belong to the head of municipal law, except in one or two instances which, being in derogation of the municipal jurisdiction of the several states, ought to be strictly construed." 1 vol. Tuck. Blac. 178.

The only instances which now occur to me in which the general government possess any municipal power, are those to pass laws of bankruptcy and naturalization, and the right of securing to authors and inventors the use of their productions. In all other cases in which the exercise of the municipal powers of a state are abridged, it is by restricting their operation, both by the state and the general government, as incompatible with some other power vested in the Union. I never before heard it contended, that the general government could, in any manner, interfere with the *local affairs of a state*, or the rights of property of the people. Their power to do so is denied by every commentator who has undertaken to expound the constitution In the 2d volume of the Federalist, p 82, it is said, "The powers delegated by the proposed constitution of the Federal government, are few and defined. Those which are to remain to the state governments, are numerous and indefinite. The former will be exercised principally on external objects; as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concerns the *lives*, *liberties*, and *properties* of the people, and the *internal order*, improvement; and prosperity of the state." Judge Tucker, also, in another part of his commentary, on that clause of the constitution reserving to the states and the people all power not delegated, says, "The Congress of the United States possess no power to regulate, or interfere with the *domestic concerns or police of any state;* it belongs not to them to esta-

blish any rules respecting the *rights of property.*" Tuck. Black. p. 315.

If then Congress possess no municipal powers—no power to interfere in the local concerns of a state, or to establish rules respecting the rights of property, by what mode of reasoning can they acquire any such power against the consent of those from whom it is to be wrested, or in any manner interfere with its exercise by the legitimate authority? If Missouri were admitted as a state, no such power could be exercised by the general government; they are then attempting to force the people of a state to give them a power which the constitution of the United States denies to them!

If then Congress can exercise no municipal power, the right to do so resides with the people; and when they come to form a constitution, they exert it in the manner most conducive to their happiness. Congress can do no more than authorize the people to exert the power which is thus inherent in them. There is a manifest distinction between the existence of a right, and the exercise of that right. The right may remain dormant for any length of time, and so it does with the people of the Territory, until the permission of the general government is given; then it is, the right becomes active; but it is still the right of the people, and not of Congress. It is the sovereign power; which consists in the right to establish a public authority to order and direct the local affairs in relation to the end of the association. This authority includes their executive, legislative, and judiciary, departments; the rights of life, liberty, and property; the course in which property may be transmitted, the manner in which debts may be recovered, the right of defining and punishing offences against society, and the establishment and regulation of all the domestic relations—husband and wife, parent and child, guardian and ward, master and servant. Could Congress, in authorizing a people to form a constitution, control any of these regulations, or modify either of the above relations? Could we prescribe the term of office of the executive, or the mode of selecting or appointing the legislature or judiciary? Could we say

that property should not descend to all the children equally, or not be deviseable by will? Could we define the marital rights, or establish certain relations between parent and child, guardian and ward, or master and servant? No one can pretend that we could; and for the plain reason, that they are objects of municipal power, of which we are entirely destitute. The relation of master and slave is but a domestic relation; involving the right of property, and every legal consequence of such a relation. There are no rights growing out of the relation of master and servant, that do not attach to that of master and slave, excepting that the master may have greater power, and the slave fewer rights; but the rights of the master are, nevertheless, rights of property, and his obligations are, to to use the property in conformity with the laws and municipal regulations of the state of which he is a member. It is a domestic relation in every state of the Union in which it exists, and the subject of their municipal power. I shall not stop to enquire into the moral nature of this relation, or the right of sovereign power to tolerate it, though I think it is apparent, that the power to hold a man in slavery is the highest exercise of sovereignty; it is sufficient for this argument, that it was a subsisting relation in these states; that the constitution of the United States found it existing, *recognized it as the subject of property*, cognizable by the municipal jurisdiction of the state, and *stipulated to guarantee both the property and the jurisdiction.*

The Union itself is composed of states, and the Constitution formed by people, tolerating slavery, and holding their slaves as subjects of property; and it never could have been their design to establish an authority competent to subvert this property. The general government have recognized this relation as the subject of property, by accepting the transfer of territory from North Carolina, with an express stipulation that Congress should not even inhibit the toleration of slavery within it, while it remained under a territorial form of government. The constitution also recognizes the right of property in slaves, by providing for their enumeration in the ratio of representation, and

by constituting them the objects of taxation: a recurrence to the 54th number of the Federalist will shew that this article was founded chiefly on the idea that slaves were property. It is there said expressly that "slaves are considered as property." It further recognizes property in the slave, and also the authority of the municipal jurisdiction, in leaving the regulation of the states in this respect undisturbed, under which they are bought and sold, for payment of debts, as property, pass to executors and administrators as property, and its free enjoyment protected in the same manner as any other species of property. But, sir, the constitution not only recognized property in slaves held at the time of its adoption, but it guaranteed the right of the people of the United States to import them from abroad for the period of twenty years. It not only refrained from disturbing the property existing, or with its natural increase, but it encouraged an accession to its numbers through the most odious channel. This very amendment treats it as property, since it deems the existing slaves as sacred, and speaks freedom only to their future progeny. So far the provisions of the constitution are confined to the recognition of property in slaves, both in enjoyment and accumulation; but it does not stop here: it protects the enjoyment of the property against the encroachment of municipal jurisdiction. This is clearly inferable from the second section of the fourth article, which authorizes an absconding slave to be reclaimed by his owner. This provision is a complete exposition of the whole spirit of the constitution. It admits the right in each state to make its own regulations upon this species of property: to tolerate or abolish. Without this clause in the constitution, it would have been in the power of each state to abolish slavery, and prevent the owner even of an absconding slave from claiming him as such. The probability that such a policy would be adopted in some of the states, suggested the necessity of this provision, and it therefore became one of the objects of the constitution to protect this very species of property. All the power, therefore, in Congress over the slaves legitimately brought here, is a *protecting power* for the benefit of the owner,

and a protecting power merely against the conflicting policy of state regulations, of which it is the peculiar object. But the instant it is admitted to be property, it becomes the subject of municipal authority only, and is invested with all the rights and disabilities of property. It would be very difficult to assign a reason why the rights of the owner in this, more than in any other species of property, could be affected. And yet it is directly invaded by this amendment.

It first proposes to set free the issue of all the slaves now in Missouri, in the face of the treaty which stipulates that the inhabitants shall be protected in the free enjoyment of their *property;* and it further interferes with the citizen of another state, in the use of the very property which the constitution permitted him to acquire, and stipulated to protect, or, at least, not to destroy. If this restriction be not imposed, the citizen of the south would be permitted to remove to Missouri, and take his slaves with him, provided the municipal laws of that people did not prohibit him. But as the Congress cannot destroy this right by a direct law, they propose to do it by an indirect assumption of power, in which is involved, not merely an usurpation of the rights of the people of Missouri, but a violation of the guarantee to the rest of the states!

We have been referred, however, to the declaration of independence, as declaratory of the principles of the constitution in this respect. I should scarcely have deemed this topic worthy of an answer, but for the confidence with which it has been reiterated in this debate. If the abstract principles, contained in this memorable paper, could possibly be supposed to have any reference to the condition of the black population in the United States; yet as it preceded the adoption of the constitution, their practical effect must depend altogether upon the positive provisions of that charter. But the truth is, sir, that the declaration of independence, had no reference to those persons who were, at that time, held in slavery. It was pronounced by the freemen of the country, and not by slaves. No one pretended that they acquired any claim to freedom on this account; on the contrary, the revolution found them in a state of servitude, the acknowledgment of

our actual independence left them so, and the constitution of the United States perpetuated their condition. The declaration of independence was the act of open resistance on the part of the white freemen of the colonies, against the pretensions of the mother country, to govern them without their consent; to assert their unalienable right of self government, and to alter or abolish it whenever it should be necessary to effect their safety and happiness. It was the resistance of freemen to the assumption of a power on the part of Great Britain, precisely similar to that which we are now endeavoring to impose upon the people of Missouri. It expressly asserts the principles that "all just powers of government are derived from the consent of he governed; and the right of the people to alter or abolish, and institute it anew, as to them shall seem most likely to effect their safety and happiness." I do not deny that the principles of the declaration of independence are those of the constitution; on the contrary, I admit that they are those upon which all our institutions repose; they are those upon which the people of Missouri claim the right to make their own constitution, and resist the imposition of any species of government, deriving its powers from any other source. But I contend that it never designed to assume or assert any principle whatsoever, in regard to the slave population of the United States, and, therefore, that it cannot be used in this debate, either as declaratory of their rights, or explanatory of he principles of the constitution and government on their behalf. It is unreasonable to assert the contrary, when every one knows, that while the freemen of this country were openly resisting the usurpations of the British Crown, they did not relax, in the slightest degree, their hold upon the negro slave; and, to him, it was a matter of entire unconcern, who should govern his master, as, in all conditions, his master would continue to govern him I do not advocate the consistency of all this; I take things as I find them under our form of government, though when we throw our eye towards St. Domingo, and reflect upon the scenes which ensued the heedless enthusiasm which characterized the French revolution, we cannot fail to admire the cautious wis-

dom of our ancestors, in not hazarding the great object of their struggle, by suddenly letting loose their unfortunate, though degraded slave population. Besides, sir, the principles of the declaration of independence would not be satisfied by merely loosening the shackles of the slaves; they would assert, not only the rights of a freeman, but an equality of those rights, civil and political. And where is the state in the Union, in which the emacipated negro has been admitted to the enjoyment of equal rights with the white population! I know of none. In some, to be sure, their rights may be greater than in others, but in none, I believe, are they upon an equality. In the state which I have the honor, in part, to represent, it has been the settled uniform policy to preserve a marked and wide discrimination, and I am free to express a hope that the policy will never be abandoned I am an enemy to slavery, but I should deprecate a policy assailing that discrimination which reason and nature have interposed between the white and black population. I forbear to press this part of the subject, sir; it presents many dark images, which it would be unbecoming in me here to express.

But, Mr. Chairman, the honorable mover of this resolution has said that we are not now enforcing the old compact of Union; but are to make a new one, with a new state, and he derived this power from the clause authorizing Congress to admit new states, though he did not take the trouble to deal much, in detail, upon this point.

I shall not deny that Congress have the power to make a contract, where the parties, which it is to affect, voluntarily enter into it, and where it is necessary in the exercise of the legitimate objects of the government, but they cannot make a contract upon any subject beyond their delegated powers, nor can they make a contract which varies the original compact of Union, the essence of which is an equality of rights among the states If, therefore, Congress possess no municipal powers under the constitution, nor the power to control them in the states, they can acquire none by any new contract; for this would be to

get more power than it was designed they should possess.

Sir, this argument of the honorable mover, is a decided exposition of the broad nature of the power, and the weakness of his cause. If this restriction can be imposed only by contract, then it admits that the right is inherent in the people of Missouri, that we can only control it by contract with them; and, that if this contract is not acceded to by them, we have no power over it. By the contract they are solicited to surrender a right which they would be at liberty to exercise, if not restrained by the contract; a right which we cannot exercise or interfere with, under the constitution, without the contract. It follows then, that under such a contract, if it were completed, the people would have fewer rights, or you more power, than the constitution confers. If such a doctrine could be tolerated, the general government would be omnipotent. Sir, the fallacy of the argument is yet more apparent. You do do not even propose, by this compact, to get the right of exercising a new power; for if the people of Missouri should agree to your terms, you could not take the power which you require them to surrender, since, by the constitution, you could not use it, any more than you could any other branch of their municipal authority; it would amount then to a stipulation, that the state should not exercise the power which, if they were to surrender, you could not employ. It would be not a grant, but an extinction of power—a complete annihilation, never again to be resumed. It is impossible, upon any known principle, that such a contract could be good, since it proposes to destroy an unalienable right in the people—a right to alter or abolish their constitution of government,

But again, sir: it is necessary, for the validity of any compact, that the parties should be both able and willing to contract. If it is not their voluntary act, it is not binding; it is an usurpation upon the unwilling party. Then here is a right in the people of Missouri to insert, or not, this provision in their constitution of state government; it is not incompatible with your powers, it depends wholly upon their sovereign will and pleasure to put it in, or leave it out, and to modify

it, in this respect, at any future day; you desire, however, to have it in, and to guard against its revocation; you can only accomplish this by a contract, into which the people must voluntarily enter. But they refuse to make the contract; they say they are desirous to retain this right; they will not give it up. What then becomes of the idea of compact? Can you force them to agree to your terms? No; then what is your remedy? In ordinary cases it would be to refuse to admit the state, until the constitution should be conformed to your views; and even this would resemble, very much, the exercise of force, by withholding immunities to which, according to the policy of the government, they would have a strong claim; but then the provisions of their constitution would not be unalterable, and you could not make them so. But what is your power or remedy when this discretion to admit, or reject, is taken away? I know of none, consistent with the obligations of good faith. I have shewn you that you have already made one contract with these people; I refer to the treaty, and the Acts of Congress under it; and that, by the terms of this contract, you have bound yourselves to admit them into the Union with rights equal to those retained by the people of the other states. Is not that compact as solemn as any that could now be made? These people have fulfilled their part of the contract, you have enjoyed all the rights and advantages secured to you under it, and they come now and demand the performance of your part. What is the language you employ? You say, it is true we have made this contract with you, but it turns out to be, in the view of a part of the country, a hard bargain; it secures to you more rights, and allows us less discretion, than we are willing to submit to, and unless you will now consent to change its terms, and enter into a new compact, by which you are to have fewer rights than the citizens of any other state, we will violate our faith! We have agreed to admit you as a state, but, unless you consent to be less than a state, we will do nothing! We will have nothing to say to you unless you will now bind yourselves and your posterity, by an irrevocable ordinance, to let us make your constitution in abridgment of your own rights; which

shall be unalterable in all future times? Sir, as between individuals, such a case would require only to be stated, to expose its fallacy and injustice; and I can acknowledge no different principles between states, more especially, where your want of good faith infuses the spirit of jealousy into the minds of your citizens, and weakens the great rock of confidence in your justice, upon which the power of this Union reposes!

But the ordinance of eighty seven has been referred to, and confidently relied upon, by the honorable gentleman from Pennsylvania (Mr. Hemphill) as illustrative of his idea of compact, and the powers of Congress in this respect. The cases are entirely dissimilar. I shall not detain you, Mr. Chairman, with a repetition of the arguments so often urged, with great ability and with much success, against the legality of this ordinance; I shall content myself with shewing its inapplicability, in fact or principle, to the case now under our consideration. We have now nothing to do either with the principles of that ordinance or the authority by which it was established. The people of Missouri do not claim to be admitted according to the principles of either; but they demand admission according to the terms of the treaty and the principles of the present constitution

This ordinance was the act of the old confederation; and whatever power they may have had to acquire the ceded territory, it is admitted, on all hands, that they possessed no authority to establish a territorial form of government, or to admit new states, without the consent of nine of the states composing the old confederacy. The territory north west of the river Ohio to which the ordinance was applied, was ceded by Virginia; it was, at the time of its cession, uninhabited, excepting by a few French and Canadian settlers, *who held slaves;* after its acquisition by the old confederacy, it was discovered that they had no power to govern it, without the consent of the state by whom it was ceded; they therefore framed the ordinance of '87, providing for its erection into states, and for the prohibition of involuntary servitude. This ordinance was to be in the nature of a compact, between the states ceding it, the United States, and the people of

the territories; it became necessary, therefore, to obtain the consent of the state of Virginia to the ordinance, which she gave, by her act passed the 30th of December, 1788; and in this manner the ordinance of '87 may be considered as forming the terms of the cession by the state of Virginia. The French and Canadian inhabitants there, at the time of the cession, were not affected by the ordinance: they continued to hold their slaves, the issue of which are held by their posterity to the present day. This ordinance was considered doubtful, until the adoption of the present constitution, by the first clause of the sixth article of which it was supposed to be confirmed. But this confirmation shows it to be in the nature of a *compact*, and not of a *law;* a compact voluntarily entered into by all the parties connected with it—not incorporated in the present constitution as a grant of power, or explanatory of its principles; but merely sanctioned by a single clause, providing for the validity of *contracts*. It was a contract made by the party ceding the territory; it did not propose to affect the rights of persons residing there; it was to operate as a contract upon those who should subsequently remove thither: such persons, therefore, went under this ordinance; they voluntarily became parties to it; and such only settled there as were willing to live without slaves, and subject to the terms of the compact. In this manner the country became settled by a non-slave holding population; and when they came to make their constitution and state governments they voluntarily framed them according to their own feelings and habits. Beyond this, I deny that there was any binding force in this ordinance. It was not competent for it to take away the right of altering the constitutions, though it is a right existing in theory merely, as the interests of the people will no doubt always prevent any alteration in this respect, If the same policy had been pursued by Congress, in respect to the territory of Louisiana, from the date of its acquisition, a similar effect would have been produced, and all the unpleasant convulsions, to which the present attempt to usurp power is likely to give rise, would have been prevented.

So far, then, as this famous ordinance is good for

any thing, it is good only in the nature of a contract; it is so treated by every gentleman who has noticed it in debate; and a contract made before the present constitution, and applicable to a particular territory, by the consent of the power ceding it. It has, then, clearly performed its office; it is functus officio; it applies to no other territory either in fact or principle. It does not follow that, because the old confederation concluded a contract, which the *people* of the United States subsequently confirmed, that therefore the present Congress can make a similar contract, enlarging their own powers, without the same sanction of the people of the United States, who have yet delegated no such authority.

But here the people of Missouri have a contract also, though it is one of a very different nature than that of the ordinance of '87. *Their* contract stipulates for their admission to the enjoyment of equal rights, immunities, and advantages, of citizens of the United States, and the restriction proposed can only be enforced by compact, independent of the constitution. We say to them that, unless they will agree to tack the ordinance of '87 to the Treaty, whose provisions will thereby be entirely varied, we will violate its terms, or disregard them. What would have been said, if we had insisted upon similar concessions by the states formed out of the territory ceded by North Carolina, which were also admitted according to the terms of the contract of cession? We have as little right to insist upon them in regard to the people of Missouri as we had to dictate them to those states. It is in both cases a violation of good faith Under this treaty we accepted a territory in which slavery existed, & rights of property recognized by the government ceding it. We stipulated to protect the enjoyment of that property. We have encouraged emigration of the free citizens of the United States thither by our whole course of policy. We have in no instance attempted to interdict the transportation of slaves there, excepting by a law which lived but a year and was then repealed: this law prevented their introduction there for sale merely; it permitted, and thereby encouraged, their introduction by persons removing into the territory to settle. In

this way, under our own auspices, this species of property has been acquired, and we now attempt, in the face of our own acts, and in defiance of the treaty, not only to force the people of Missouri to give up their right to form their constitution, in regard to the future introduction of slaves by persons going there to live; but also to annihilate all the rights already acquired: we force them to do what we never thought it prudent ourselves to attempt, even when we had the power!

No little reliance has also been placed, by the honorable mover, upon the clause in the constitution, vesting in Congress a power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

I do not propose to enter, minutely, into the inquiry, whether the power of Congress to establish a territorial government is derived from this clause. I incline to the opinion that it is not. The power, here conferred, is a power to dispose of and make needful rules respecting the *property of the United States*. It was designed, I think, to authorize the sale of the land for purposes of revenue, and all regulations which might be deemed necessary for its proper disposition; or to convert it to other public objects disconnected with sale or revenue; to retain this power, even after the territory had assumed a state government, and perhaps to divest from the state government the right of taxing it, as it would do the property of individuals. It is silent as to the *people*, and their slaves are the *property* of their owners, and not of the government. The right to *govern* a territory is clearly incident to the right of *acquiring* it. It would be absurd to say that any government might purchase a territory with a population, and not have the power to give them laws; but, from whatever source the power is derivable, I admit it to be plenary, so long as it remains in a condition of territorial dependence, but no longer. I am willing, at any time, to exercise this power. I regret that it has not been done sooner. But, though Congress can give laws to a *territory*, it cannot prescribe them to a *state*. The condition of the people of a territory is to be governed by others; of a state to govern themselves. This is the great favor we permit them

to enjoy when we exalt them to the character of a state. The instant we authorize them to form their constitution, the territorial disabilities, and the powers of Congress over them, crumble together in the dust. A new being, and a new relation spring up—the state authority, derived from the just powers of the people, takes its place; every feature of the territorial authority become effaced, and the federal powers of Congress, encircling a *state*, commence their operation. There is nothing of territorial disability on the one hand, or territorial authority on the other, which passes into the new order of things; if they did, the state would be incomplete.

But, Mr. Chairman, the honorable mover also relied very confidently on the ninth section of the first article of the constitution, which provides that "the migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." It is said that this clause invests Congress with the power of prohibiting the removal of slaves from one state of the Union to another; but if it had not been for the seriousness and sincerity with which it has been pressed by the honorable gentleman from Penn. (Mr. Hemphill) I should have deemed it worthy of but a very few remarks. It now deserves a close examination *

It is apparent, and indeed is admitted by all, that this clause contains no grant of power, but restricts for a limited period the exercise of an existing power. And also that the power, whatever it may be, is now the same over the old as the new states. Unless, therefore, Congress possess the power, by some other provision in the constitution, to inhibit the removal of slaves from one state into another; this clause cannot refer to that description of persons, or to that mode of removal. Conceding, for the sake of argument, the full import of this clause, I cannot conceive of any

* Since this speech was delivered, the hon. Rufus King, in the Senate, frankly disavowed this source of power, as authorizing the restriction. It has since been given up by almost every gentleman who has advocated the restriction.

thing more destitute of weight in this matter. For suppose Congress to possess the power to prohibit the carrying of slaves from one state into another, it is a power merely of legislation, for they have no other than legislative powers. They would be obliged to exercise it by a law, and could do so, as well after the state should be admitted, as before. The power in Congress to legislate upon this subject, confers no authority to compel the people of Missouri to put the provision into their constitution; but should be exercised whenever circumstances required it, without reference to the acts of the state. Besides, no legislative act of this description, could be, in its nature, irrevocable; but here is an expedient to convert a power of legislating in the ordinary way, into a constitution making power, with the dangerous novelty of making it unalterable! The very attempt to compel the surrender of their rights, in this respect, from the people of Missouri, is in itself conclusive, that gentlemen who rely upon this clause, are themselves aware, that even the legislative power does not exist. Nor does it exist sir.

The honorable gentleman from Pennsylvania, Mr. Hemphill, admits that he must find the power in some other part of the constitution, and he says it is contained in the clause authorizing Congress "to regulate commerce among the several states." He supposes the authority to prevent the importation of slaves from abroad is derived from the power to regulate commerce with foreign nations;" and that, therefore, the authority to prevent the "migration of them from one state to another, is derived from the similar power in relation to the internal commerce. But the gentleman must not only be correct in this position, but he must additionally shew, that the word "migration", applies to slaves at all, and also to their removal from state to state, to sustain his argument. He is correct in neither. The power to prohibit the "importation" of slaves from foreign countries, is not derived from the clause to regulate commerce with foreign nations. If it were, the prohibition could only be made where the slaves were brought into the United States, in the way of commerce; it would confer no

power to prevent a Canadian, or inhabitant of Florida, from moving over the line with his family and settling on a farm, for agricultural purposes merely. I derive the authority from a much more extensive source, from the general unlimited power in the federal government to regulate all our concerns and intercourse whatsoever with foreign nations, & prohibit the coming in as well of freemen as slaves for any purpose or in any manner, whenever the public exigences of the country render it adviseable. But, though the right of prohibiting the importation of slaves from abroad, should be inferred from the power to regulate commerce with foreign nations, it does not follow that the right to prevent their removal from state to state, would be derived from the power to regulate commerce "among the several states." The phraseology of this clause is different—the regulation is to be "among the several states." Congress have no right to make any regulation which applies only to one or two states; it must be general among the whole; all must share the advantages or disadvantages of the regulation, whatever they may be. Partial regulations of commerce was precisely the evil which the power vested in the Congress was intended to guard against. It was easily foreseen, if the commercial intercourse between state and state, were left to the state authorities, that, by means of local regulations, or improper contributions levied on the transportation of merchandize through its territory, any one state might materially interfere with the legitimate commerce of another; these would naturally lead to counteracting measures by the other state. and, in this manner, combinations and collisions, ruinous to the interests of all, would follow. The prevention of these evils was the principal object of giving the power to the general government.* It is a power in a common government, for a common benefit; and the same regulation must be applied to all the states equally. It was intended to secure to the citizens of every state the right of carrying their merchandize when and wheresoever their interests dictated, without interruption from the conflict-

* See the 42d number of the Federalist.

ing views of any other state; it could never have been the design to prohibit entirely the carrying of merchandize from one state, or from any of the states, into one particular state. Such an idea is at once repelled by the fifth paragraph of the ninth section of the first article; which provides, that "no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another." As connected with this part of the subject, it is to be remembered, that the power is, to "*regulate* commerce," not to abolish or prohibit it altogether. I will not deny, that Congress may, when any public occasion requires it, suspend the commercial intercourse "among the several states," for a limited time; but I do insist, that any law which should prohibit it forever would be unconstitutional. Will any gentlemen contend, that Congress have power to say that the state of Georgia should never hereafter send rice, which is clearly an article of commerce, into the state of Missouri, or compel the people of the latter state to agree, by an irrevocable ordinance, never to admit the article of rice to be received into her state from any other part of the Union? And if the power to prohibit the removal of slaves depends upon the right to regulate commerce, it must be because they are articles of commerce; and, therefore, like every other article of a commercial nature. Again, sir, the power to regulate commerce, must apply only to an intercourse purely commercial, and to articles used and transported in the way of commerce. All articles of household furniture, and implements of agriculture, may be used in the way of commerce, they are so when they are bought and sold, or carried about for sale, but they cannot be so considered when they are carried by their proprietor for his own use, when he pleases to remove from one state into another; such a removal would form no part of the commerce among the states Nor will it, I apprehend, be pretended, that the general government could, in such a case, prevent the removal; because the constitution secures him equal privileges in every state; and they would have as little power to prevent him from taking his property with him, under the pretence of regulating "commerce among the

several states." The right of removing necessarily includes the right of carrying one's family and property with him. Sir, the slave is in no greater degree an article of commerce, when his owner, in his transit from one state into another, for agricultural purposes, takes him, as a part of his property, to assist in working his land, than any other member of his family, or any other article of his property. He does not carry him as an article of commerce; there is no buying or selling in the case. This amendment however applies to this as well as the instances of transportation for purposes of sale. But, sir, the honorable gentleman from Pennsylvania, is obliged to admit, that the term "importation" cannot apply to intercourse between the states; since a tax or duty may be imposed on such importation, and the constitution expressly provides, that "no tax or duty shall be laid on articles exported from any state." Now, sir, importation may be by land as well as by water; and you could not, at any period, either before or after the year 1808, impose any tax upon the exportation from a state: the gentleman's argument then involves him in this inconsistency that though Congress cannot, at any time, impose any duty on articles exported from any state, they may prevent their exportation altogether; or that, though you have the power to prevent the transportation of slaves, from state to state, by land, you have no power whatsoever over them if carried by water; or, that, though importation and migration both be means of carrying on commerce, yet, under the general power to regulate that commerce, you may abolish one but not the other! Again, Sir, it has never been denied, that the power in Congress to regulate commerce is an exclusive power—the states cannot exercise it; and, therefore, if the right to prevent the removal of slaves, from one state to another, is a part of this power, it must of course be exclusive. And yet, sir, we see that all the states have constantly made their own regulations upon this subject. I have already shewn you, that the constitution of the United States expressly recognizes their right to do so; their uniform practice has given a contemporaneous construction to the instrument, by exercising the power ever since its adoption; and if a

contrary doctrine should now prevail, all those slaves who have been hitherto declared free, by reason of a violation of any state regulation, are yet slaves, and may be reclaimed by their owners! But it is impossible that such a doctrine can ever prevail.

It appears to me, then, Mr. Chairman, that the right contended for cannot be derived from the power to regulate commerce among the several states; and therefore that the power, which was restrained until the year 1808, was that of preventing the migration or importation of persons from *foreign countries only*. It would be very immaterial, in the present argument, whether the word *persons* related to slaves only, or to freemen as well as slaves; I believe, however, it relates to both.

In a just interpretation of this clause, we are bound to assign to each word a distinct meaning, to suppose that each had a definite object, and that neither was used unnecessarily. If both "migration" and "importation" be applied to slaves, one would be wholly useless. The word "importation" would embrace every possible means by which slaves could be introduced into the country against their will, as it would every means by which they could be removed from one state into another. We see, moreover, that, upon the importation only, the imposition of a tax or duty is authorized, and, if slaves can migrate at all, they do so as well when coming hither from a foreign country, as in going from state to state, and it is therefore unreasonable to suppose that while it was the evident policy and intention to prevent their coming in at all, the "importation" only would be obstructed, and their "migration" left free and unrestricted.

But, sir, the word "migration" cannot apply to the *forcible* or *involuntary* removal of a slave from any state, foreign or domestic. It is the voluntary act of a free agent; and a *slave* has no such *will*, and is no such agent; he is subject to the will of a master, by whom all his actions are controlled. It is, moreover, a *right*, so defined by all the best writers on the subject; it is the right of quitting one's country, and of going into another in the pursuit of wealth and happiness, and, according to the principles of our republi-

can form of government, it is unalienable. But, will it be pretended that the slave has any such right, when we have seen that, in the only instance in which he voluntarily leaves his master's service, he is compelled, in defiance of all the municipal regulations of other states, to be reclaimed? No, sir, he has no such right, he never changes his residence, but under the compulsion of a power he dare not resist. It is no exercise of a right, when the unhappy slave is taken by his owner from place to place—he obeys a hard fate which he cannot control, and he can, with no more propriety, be said to migrate, than the exile who is driven from his family and home, into involuntary banishment.

The term "migration," as here used, is also a general one, and has relation to the government by which it is to be controlled. Its true meaning, is that of quitting their own country, and of removing beyond the jurisdiction of the government: its meaning is precise and technical. Therefore, though a man may change his residence, so long as he remains under the government of the United States, he does not migrate, in the sense of the constitution. When a man removes from one county to another of the same state, he cannot be said to have migrated in relation to that state, nor can he be said to migrate in relation to the United States, when he removes from one state to another in the Union. He is still in the same country, still under the same jurisdiction and laws, enjoying equal rights, and liable to the same obligations; he is still a citizen, nay an inhabitant of the United States, and the protecting arm of the constitution shields and conducts him wherever he goes; he is not an emigrant, until he has turned his back upon his country, and quitted its jurisdiction.

But, Mr. Chairman, if the words, as used, be in any degree ambiguous, we are bound to consider the circumstances under which the constitution was adopted, and the object which was to be effected by the restrictive clause. It is clear that the general government possessed the power, under the constitution, to restrict the "importation" of slaves from abroad, either as incident to their general powers, or to the particular power to regulate commerce with foreign nations. It is,

in my opinion, equally clear, that they also possessed the power of prohibiting the migration of foreign freemen, under particular circumstances. It has been already shewn that all our intercourse with foreign nations is peculiarly under the control of the general government, to which the right of regulating or preventing foreign emigration is necessarily incident; if it were otherwise, any single state, by opening its ports to foreign emigration, might let in a population to any extent, and against the evident policy and interests of all the others. At the adoption of the constitution, however, the states being in their infancy, it was their policy to encourage emigration from abroad, and, as its interruption had been one of the causes of complaint against the British government, it was natural that the powers of the federal government should be placed under some restraint in this respect. The year 1808, was, I imagine, agreed upon, in consequence of the compromise upon the other point. A consideration of the object of the compromise will leave no room for doubt. It related to the increase of population, either of freemen or slaves, from abroad. The constitution had provided, that three-fifths of the slave population should be enumerated in the ratio of representation, which would have been constantly augmenting, by the importation from abroad, beyond the natural increase of this species of population, and it became, therefore, a matter of compromise, upon the mere point of time, for which the importation should be tolerated. But this concession could not have been made without a similar license to the emigration of free persons in favor of the northern and non-slave holding states, and thus the affair was adjusted by allowing the same period to each. The essence of this compromise being entirely an affair of time, leaves no doubt as to its meaning. It was to prevent the premature ascendancy in the south, by an undue increase of this population, an object which would have been as effectually promoted by the dispersion of the slaves among the other states, as by inhibiting their introduction from abroad, for, in case of their diffusion, the north would acquire their share of the numbers, and so the representation would be equalized.

That this clause had no sort of reference to a power to prevent the removal of slaves from state to state is further evident, from the important consideration that, previous to the adoption of the constitution, each state itself possessed the undoubted authority to prohibit the bringing in of slaves from any other state. It is, therefore extremely improbable that, with all the jealousy and hostility of the northern states upon this subject, they should have called in the aid of the general government to accomplish what they could do without it, and thus weaken their own power, by confiding it to councils who had an interest in encouraging what they desired to abolish. It is impossible, sir, to resist this construction, when, in aid of it, are arrayed the acts and practice of all the states, from the establishment of the general government up to the present day. Sir, it is a power which can be safely exerted only by the individual states themselves; they never did, and never ought, to surrender it; they never will, and never ought, to submit to its exercise by the general government.

Mr. Chairman, having consumed so much of the time of the committee in the constitutional question, I have not the power, if I possessed the inclination, to enter into a consideration of the expediency of this amendment. It is sufficient for me to know, that the constitution forbids me to adopt it, though I am free to acknowledge that the establishment of a precedent for interfering in the formation of state constitutions is of a very dangerous character. But, surely, sir, our right ought to be very clear before we pursue it in a case like the present. It involves consequences of too serious a nature to be hazarded upon a doubtful power. It is worse than an attempt to *legislate* in a case in which your power was ambiguous, and in which your authority could be examined, and sustained, or overruled by the judicial tribunals of the nation, which are the common arbiters of us all. It forces an odious measure upon an unwilling people, in a form which leaves them no redress in any pacific course. If they do not tamely submit to the restriction, you must either ignominiously abandon, or impose it by force! Impose it, sir?—No! But make the hazardous

attempt to enforce its imposition! I will not enumerate the effects of such a conflict: I pray Heaven it may never happen, but I will say, that, in my opinion, the object is not worth the conflict.

Sir, I invite gentlemen to look at the present state of the public councils, and consider whether they do not hazard their whole object by persisting in a measure so repugnant to the ardent feelings of at least one moiety of this empire, and so much opposed to the constitutional views of many of the friends of the avowed policy. It is a consideration to which a statesman is bound to look: if actuated by motives of humanity and the public peace, he would be criminal to disregard it. We see it ascertained beyond doubt that the Senate will not consent to this restriction, and that, if we persist in it, they will not unite even in any *territorial* regulation. The introduction of slaves into the western country will remain free. Those who desire to send this property there for sale will be stimulated to do so without delay; the market there will rise in apprehension of the future acts of Congress: dealers and settlers will take advantage of it; and thus slavery will become too deeply rooted to yield to any means of extirpation which future councils may employ. In the mean time, too, public excitement increases; evil men seize upon the occasion to promote their designs; local prejudices spring up; and a spirit of jealousy and discord is roused in all parts of the country, which they who engender will be wholly unable to allay or direct. But if, consulting the present state of things, gentlemen will yield something to a spirit of harmony and mutual interests, we may now put this unpleasant subject to sleep forever. The people of Missouri will enter the Union with their rights unimpaired, and their feelings undisturbed, devoted to your institutions, and inspired with full confidence in your justice and generosity; the territorial soil will then be unpolluted with slavery. Its introduction in regard to that being prohibited, much the largest portion of the western world will be peopled by a population unfriendly to slavery, and when they come to frame their state constitutions, preparatory to their future admission into the Union, they will voluntarily

form them in conformity with their habits and principles; for I desire to be understood as denying the authority of Congress to make any regulation for a *territory*, which can be binding upon the people against their consent, when they come to make their constitution, and after their admission into the Union. I sanctify no irrevocable ordinances. But their territorial regulations will accomplish the object by creating a population whose interests it will be voluntarily to adopt the restriction. In this way, too Missouri will be seated in the mids of non-slave-holding states, and the force of public sentiment will soon lead to the emancipation of her present slave population. For the accomplishment of all these objects, gentlemen are called upon merely to abstain from the assumption of a doubtful power over a resisting people!

Mr. Chairman, the union of these states is the production of the spirit of harmony and compromise. Do we remember how much our fathers surrendered to compose, and shall we refuse to surrender any thing to preserve it? It was founded in common confidence, and for common benefits; it must be cherished by a common affection and forbearance, or it will scarcely survive the hands which planted it. The founders of this Union had their own advantage and the welfare of their children to recommend its adoption; we have our interests, the welfare of our posterity, and the duty we owe to those who transmitted it to us, to perpetuate its blessings. Shall it be said, that we will not sacrifice one prejudice on the altar of the Union, for its preservation, when they offered up thousands to rear it? *They* not only tolerated the existing slavery, but, in the spirit of mutual compromise, consented to its augmentation from abroad for twenty years! *We* are only required to leave undisturbed that which they entailed upon us: nay, sir, we are merely required to abstain from encroaching upon the rights of the people, and, in doing so, multiply the chances of emancipation, and meliorate the condition of the slave!

Sir, if the cause of this restriction upon the people of Missouri is deaf to all these considerations, and stubbornly sacrifices all, rather than yield a part, I pronounce it an unholy and an unprofitable cause. It carries no peace to the bosom of the enslaved African

now on your shores; it neither casts off his fetters, nor lightens his burthen. Pass this restriction, and his chains are rivetted as tight as ever; his doom is fixed as irrevocably, nay, more so than before. It may serve, however, Mr. Chairman, to foment political cabals, and promote the unhallowed views of the ambitious and designing. I do not say that such was its object in its origin; I am sure it was not; and I do not believe there is any gentleman on this floor who could be the tool in such an intrigue. But may there not be men out of this House, who would avail themselves of such a state of public excitement, to accomplish the possession of power? Sir, may there not be men out of this House, who are now adding to the impetus which this subject has received for such a purpose? Gentlemen will remember, that the objects of an ambitious man are generally more than half accomplished, before he is willing to avow them. I will not say that there are such, but I will say, if there are, they are unworthy of any public trust in this nation. Nor, sir, will they have much reason to rejoice in their triumph, should they be successful. No political power can be permanent, in this country, which shall be founded on local jealousy, and geographical distinctions. Public honors, to be durable, must be won by public services, and distinguished merit; they must be sought through the affectionate confidence of a virtuous and intelligent community; they must be the offspring of public gratitude for public worth. Power acquired in any other way, will not be worth possessing: he who acquires it by these divisions and distinctions, will not lie upon a bed of roses; his honors will be worn by a fretful, if not a criminal brow, and, in the midst of a discontented and distracted empire. He will come to the councils of a people disordered by intestine feuds, with feelings embittered by the recollection of domestic strife: his triumph would be as evanescent as uncomfortable. I repeat it, sir, that it will be well for gentlemen to consider whether there are not men who will not take advantage of the present agitation, to engender all this mischief. Sir, if there should be one such, it is our duty to defeat his machinations; he is unworthy our confidence; sir, he sets a cormorant in the tree of life,

"—— devising death
To them who live."——.